



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

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W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

Robert G. Burnley  
Director

Francis L. Daniel  
Regional Director

## **VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO**

**Service Metal Fabricators, Inc.  
EPA ID Number VAR000011965**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Virginia Waste Management Board and Service Metal Fabricators, Inc., for the purpose of resolving certain alleged violations of environmental law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “SMF” means Service Metal Fabricators, Inc., a Virginia corporation, and, if applicable, its affiliates, partners, subsidiaries, and parents.
6. “Order” means this document, also known as a consent order.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9VAC 20-60-12 *et seq.* ("VHWMR"). The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-262, -266, and -268.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. SMF owns and operates the sheet metal fabrication and coatings application facility located at 1708 Endeavor Dr., Williamsburg, VA 23185 (the facility).
2. SMF can be a generator of hazardous waste at this facility, including paint waste and chromium waste. The facility is regulated as a "Small Quantity Generator" because it generates more than 100 kilograms (220 pounds) and less than 1000 kilograms (2,200 pounds) hazardous waste per month.
3. On August 10, 2004 DEQ TRO staff conducted a hazardous waste inspection of the facility and found the following:
  - a. one 55 gallon accumulation container of less than 55 gallons hazardous waste did not have an accumulation start date;
  - b. two 55 gallon accumulation containers of less than 55 gallons hazardous waste, did not have the covers closed and one cover did not have a latch;
  - c. a hazardous waste manifest #10353 dated May 24, 2001 did not have a "returned to generator" copy from the designated receipt facility;
  - d. three filled 55 gallon containers of hazardous waste were dated as follows :
    - 1) drum dated December 2, 2002; 2) drum dated March 2, 2003 ; 3) drum dated October 16, 2003.
4. On April 19, 2005 DEQ TRO staff conducted another hazardous waste inspection of the facility and found the following:
  - a. one 55 gallon accumulation container of less than 55 gallons did not have the cover latched;
  - b. one 55 gallon accumulation container had a completed fill date of March 12, 2005, and had not been moved to the hazardous waste storage area within three days;
  - c. one 55 gallon accumulation container of less than 55 gallons was not at or near the point of generation of the hazardous waste and under the control of the operator generating the hazardous waste.
5. 40 CFR 262.34(a)(2) and 9 VAC 20-60-262 provides that the date which each period of accumulation of hazardous waste begins must be clearly marked and visible for inspection on each container. DEQ alleged that SMF violated 40 CFR

262.34(a)(2) by not clearly marking and visible for inspection the period of accumulation on one 55 gallon accumulation container.

6. 40 CFR 265.173(a) and 9 VAC 20-60-265 provides that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste. DEQ alleged that SMF violated 40 CFR 265.173(a) by failing to cover and latch three less than 55 gallon accumulation containers (two observed during the August 10, 2004 inspection, and one observed during the April 19, 2005 inspection). The inspection report notes that the covers were placed onto the drums during the inspections.
7. 40 CFR 262.40(a) and 9 VAC 20-60-262 provides that a generator must keep a copy of each manifest signed for three years or until he receives a signed copy from each designated facility which received the waste. This copy must be retained for at least three years from the date the waste was accepted by the initial transporter. The records review during the facility inspection on August 10, 2004 revealed that hazardous waste manifest #10353 dated May 24, 2001 did not have a signed "return to generator" copy of the manifest from the designated facility which received the waste. DEQ alleged that SMF violated 40 CFR 262.40(a) by failing to have on file a "return to generator" copy of manifest #10353 dated May 24, 2001. A copy of the signed return to generator form was faxed to DEQ on September 13, 2004.
8. 40 CFR 262.34(e) and 9 VAC 20-60-262 provides that a small quantity generator may accumulate hazardous waste on-site for up to 270 days. Three 55 gallon drum containers of hazardous waste were observed during the August 10, 2004 inspection to have been accumulated in excess of 270 days by 347 days, 258 days, and 29 days. DEQ alleged that SMF violated 40 CFR 262.34(e) by accumulating three 55 gallon drum containers of hazardous waste each in excess of 270 days.
9. 40 CFR 262.34(c)(2) and 9 VAC 20-60-262 provides that a generator that accumulates up to 55 gallons hazardous waste at or near a point of generation, must move the container within three days (72 hours) of accumulating 55 gallons to a storage area. One 55 gallon container of hazardous waste accumulated at or near a point of generation was observed during the April 19, 2005 inspection that had not been moved for 42 days. DEQ alleged that SMF violated 40 CFR 262.34(c)(2) by failing to remove an accumulated 55 gallon drum container of hazardous waste from a satellite accumulation area within 3 days (72 hours) of accumulation of 55 gallons.
10. 40 CFR 262.34(c) and 9 VAC 20-60-262 provides that a generator may accumulate as much as 55 gallons of hazardous waste at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste. During the August 10, 2004 and April 19, 2005 inspections, it was observed that hazardous paint wastes were being accumulated around a corner and through a door in a separate room from

the point of generation. DEQ alleged that SMF violated 40 CFR 262.34(c) by accumulating hazardous paint waste not at or near the point of generation of hazardous waste and under control of the operator. SMF maintains that it acted reasonably and in good faith while treating the paint waste accumulation container as a "satellite accumulation container" near the point of generation and under the control of the operator of the process generating the waste.

11. DEQ issued SMF Notices of Violations on August 30, 2004 and May 13, 2005 advising of the above listed alleged violations of hazardous waste management and recordkeeping.
12. SMF has cooperated with DEQ to resolve the allegations of regulatory violations.

#### **SECTION D: Agreement and Order**

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455, orders SMF, and SMF voluntarily agrees, to pay a civil charge of \$2,590.00 within 30 days of the effective date of this Order in settlement of the alleged violations set forth in this Order. Payment shall be made by check payable to the "Treasurer of Virginia," shall indicate the SMF's Federal Identification Number, and shall be sent to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

2. SMF agrees to provide DEQ within 90 days of the effective date of this Order, an approvable facility plan to manage hazardous waste.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of SMF for good cause shown by SMF, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notices of Violations issued to SMF by DEQ on August 30, 2004 and May 13, 2005. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. This Order is made by agreement and with the consent of the parties, and does not constitute a finding, adjudication or admission of violation of any federal, state or local law, rule, or regulation or of any of the allegations contained herein.
4. SMF consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. SMF declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by SMF to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. SMF shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. SMF shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The SMF shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and SMF. Notwithstanding the foregoing, SMF agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the SMF. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve SMF from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, SMF voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Dec. 13, 2005.

Francis L. Daniel

Francis L. Daniel, Regional Director  
for Robert G. Burnley, Director  
Department of Environmental Quality

SMF voluntarily agrees to the issuance of this Order.

By: Thomas R. Russ

Date: October 28, 2005

Commonwealth of Virginia

City/County of James City

The foregoing document was signed and acknowledged before me this 28 day of October, 2005, by Thomas R. Russ, who is  
(month) (name)

President of SMF, on behalf of SMF  
(title)

Laura C. Wilk

Notary Public

My commission expires: August 31, 2006

